

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

GARY DEE BICE,)	
)	
Plaintiff,)	
)	
v.)	No. 1:10CV21 CEJ
)	
JOHN JORDAN, ¹ et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of Gary Bice, an inmate at the Cape Girardeau County Jail (the “Jail”), for leave to commence this action without payment of the required filing fee.

28 U.S.C. § 1915(b)(1)

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner’s account, or (2) the average monthly balance in the prisoner’s account for the prior six-month period. After

¹The Court will order the Clerk to change the name of defendant George Jordan to John Jordan.

payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. Id.

Plaintiff has submitted an affidavit and a certified copy of his prison account statement for the six-month period immediately preceding the submission of his complaint. A review of plaintiff's account indicates an average monthly deposit of \$81.35, and an average monthly balance of \$29.51. Plaintiff has insufficient funds to pay the entire filing fee. Accordingly, the Court will assess an initial partial filing fee of \$16.27, which is 20 percent of plaintiff's average monthly deposit.

28 U.S.C. § 1915(e)(2)(B)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. An action is frivolous if it "lacks an arguable basis in either law or fact." Neitzke v. Williams, 490 U.S. 319, 328 (1989); Denton v. Hernandez, 112 S. Ct. 1728, 1733 (1992). An action is malicious if it is undertaken for the purpose of harassing the named defendants and not for the purpose of vindicating a cognizable right. Spencer

v. Rhodes, 656 F. Supp. 458, 461-63 (E.D.N.C. 1987), aff'd 826 F.2d 1059 (4th Cir. 1987). A complaint fails to state a claim if it does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007).

Plaintiff’s claim against the Cape County Jail is legally frivolous because the Jail is not a suable entity. Ketchum v. City of West Memphis, Ark., 974 F.2d 81, 81 (8th Cir. 1992) (departments or subdivisions of local government are “not juridical entities suable as such.”); Catlett v. Jefferson County, 299 F. Supp. 2d 967, 968-69 (E.D. Mo. 2004) (same). As a result, the Court will dismiss the Cape County Jail from the complaint.

Defendant “Nursing Staff” is not a proper defendant. Plaintiff must name the individual persons who he intends to sue in his amended complaint. As a result, the Court will dismiss defendant “Nursing Staff” from the complaint.

Upon review, the Court finds that defendants Jordan and Mulcahy should not be dismissed at this time. As a result, the Court will order the Clerk to serve process as to these defendants.

Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion to proceed in forma pauperis [#2] is **granted**.

IT IS FURTHER ORDERED that the plaintiff shall pay an initial filing fee of \$16.27 no later than April 26, 2010. Plaintiff is instructed to make his remittance payable to “Clerk, United States District Court,” and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that if plaintiff fails to pay the initial partial filing fee by April 26, 2010, this case will be dismissed without prejudice.

IT IS FURTHER ORDERED that the Clerk shall issue process or cause process to issue as to defendants John Jordan and Unknown Mulcahy.

IT IS FURTHER ORDERED that the Clerk shall not issue process as to defendants Cape County Jail or Nursing Staff because plaintiff’s claims against these defendants are legally frivolous.

IT IS FURTHER ORDERED that plaintiff’s motion to amend/correct party name of George Jordan [#8] is **granted**.

IT IS FURTHER ORDERED that the Clerk shall change the name of defendant George Jordan to John Jordan.

An Order of Partial Dismissal will be filed with this Memorandum and Order.

Dated this 29th day of March, 2010.

A handwritten signature in blue ink, reading "Carol E. Jackson", is written over a horizontal line.

CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE